

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

CASE NO. 8:13-CR-517-T-17AAS

JOSE AGUSTIN LOPEZ.

_____ /

ORDER

This cause is before the Court on:

Dkt. 132 Motion to Reduce Sentence Pursuant to the First Step Act of 2018
Dkt. 135 Motion to Reduce Sentence Pursuant to the First Step Act of 2018

Defendant Jose Agustin Lopez, *pro se*, moves for a sentence reduction pursuant to the First Step Act of 2018. Defendant Lopez is seeking a determination that Defendant is entitled to 54 days of "good time credit" for each year that Defendant is in BOP custody, rather than the maximum of 47 days.

1. Background

Defendant Lopez was charged in Count I with Conspiracy to Possess with Intent to Distribute Five Kilograms or More of Cocaine while on Board a Vessel Subject to the Jurisdiction of the United States, in violation of 46 U.S.C, Sec. 70506(a) and (b).

Defendant Lopez entered into a Plea Agreement, pleading guilty to Count 1, and was sentenced on June 19, 2014. At sentencing, Defendant Lopez was accountable for 1,450 kilograms of cocaine. Defendant Lopez was sentenced to a term of imprisonment of 135 months; a term of supervised release of 60 months; fine waived, and a special assessment fee of \$100.00. Defendant Lopez' sentence is the statutory mandatory minimum. Defendant Lopez raised objections to the PSR at sentencing, which the Court overruled.

After sentencing, Defendant Lopez moved for a sentence reduction pursuant to Amendment 782. The U.S. Probation Office filed an Amendment 782 Memorandum which indicated that Defendant Lopez was not eligible for a sentence reduction, since Defendant's base offense level remained at level

38, based on the Drug Quantity Table.

2. Request for Determination of "Good Time Credit"

The First Step Act amends 18 U.S.C. Sec. 3624(b) to alter the method by which the Bureau of Prisons must calculate a prisoner's "good conduct time credits."

Prior to the First Step Act, calculation of good time credit by the BOP was based on the sentence an inmate actually served, making 47 days per year the maximum amount of good time credit a prisoner could earn. Pursuant to the First Step Act, good time credit will be calculated based on the sentence imposed, not on the sentence an inmate actually serves, making 54 days per year the maximum amount of good time credit a prison could earn.

Section 101(a) of the First Step Act required the Attorney General to develop and release a risk and needs assessment under subchapter D of chapter 229 of Title 18, United States Code, as added by Section 101(a) of the Act (the "effective date" provision). The First Step Act became effective on December 21, 2018; 210 days from that date is July 29, 2019.

Defendant Lopez would be entitled to recalculation of his "good time credit" on July 29, 2019. After the BOP has calculated Defendant Lopez' "good time credit," if Defendant Lopez disagrees with the determination, Defendant Lopez must exhaust the administrative remedies available to Defendant.

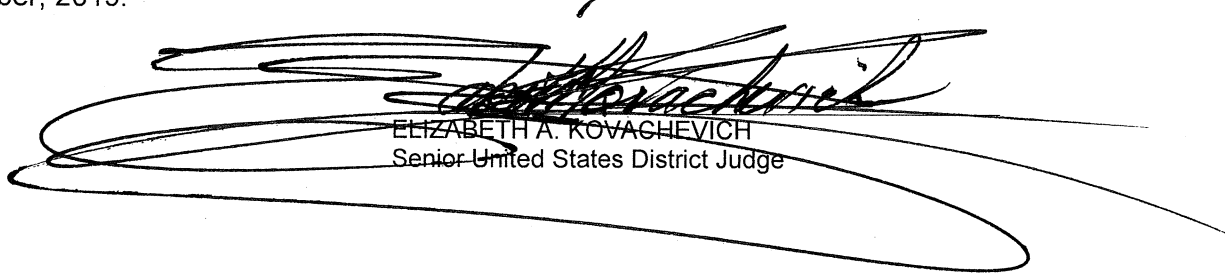
Defendant Lopez has not alleged that Defendant Lopez has complied with the multi-stage administrative process under 28 CFR Secs. 542.10-19.

If Defendant Lopez seeks to challenge the BOP's **final** determination of the time credit, Defendant Lopez must do so by filing a petition for habeas corpus under 28 U.S.C. Sec. 2241 **in the district in which Defendant Lopez is incarcerated.** See *Davis v. Warden, FCC Coleman*, 661 Fed. Appx. 561 (11th Cir. 2016).

After consideration, the Court denies Defendant Lopez' Motions to Reduce Sentence without prejudice. Accordingly, it is

ORDERED that *pro se* Defendant Jose Agustin Lopez' Motion to Reduce Sentence Pursuant to the First Step Act of 2018 (Dkt. 132) is **denied without prejudice**, and Motion to Reduce Sentence Pursuant to the First Step Act of 2018 (Dkt. 135) is **denied without prejudice**.

DONE and ORDERED in Chambers in Tampa, Florida on this **18th** day of November, 2019.



ELIZABETH A. KOVACHEVICH
Senior United States District Judge

Copies to:

All parties and counsel of record

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